

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	CRIMINAL ACTION NO.
v.)	2:16cr542-MHT
)	(WO)
DARRIUS MARCEL MASTIN)	

OPINION AND ORDER

This cause is before the court on the motion to continue made by defendant Darrius Marcel Mastin on October 19, 2017. For the reasons set forth below, the court finds that jury selection and trial, now set for November 6, 2017, should be continued pursuant to 18 U.S.C. § 3161(h)(7).

While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an

offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Mastin in a speedy trial. Mastin filed his third pro se motion for new counsel on

October 11, 2017. That motion was granted, and current defense counsel was appointed on October 17, 2017. Mastin's new defense counsel has made arrangements to obtain discovery and all other relevant materials, but needs to resolve a number of pretrial issues that are likely to arise from discovery, which will include filing a motion to suppress. In light of the limited time defense counsel has had to orient himself with the case and the discovery materials, as well as the time needed to file and resolve the motion to suppress, the current November 6 trial date does not provide enough time for defense counsel to prepare for jury selection and trial. A continuance is therefore warranted and necessary.

The government does not object to a continuance.

Accordingly, it is ORDERED as follows:

(1) The motion for continuance of defendant Darrius Marcel Mastin (doc. no. 54) is granted.

(2) The jury selection and trial, now set for November 6, 2017, are reset for December 4, 2017, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 31st day of October, 2017.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE